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Delegate Preparation and Participation in Conferences of the Parties to Environmental Treaties

Edward J. Goodwin
Lecturer in Law, University of Nottingham, United Kingdom

Abstract
Little research has been conducted into the way delegations prepare for, and then participate in, plenary meetings under multi-lateral environmental agreements - a key administrative stage in the on-going development of international environmental regimes and law. Using the 1971 Convention on Wetlands of International Importance being used as the main example, this paper explores the external rules that shape the 'internal modalities' of states and their delegations as they undertake these stages. Other insights into delegate preparation and participation are sought from published accounts and internet based resources.

Keywords
delegations; conference of the parties; state position formulation; delegate identity and experience; credentials; full powers; consensus

1. Introduction

Since Robin Churchill and Geir Ulfstein first sought to widen academic enquiry into the institutional arrangements established to serve environmental treaties,[1] numerous authors have looked to engage with the topic and their article.[2] Indeed, the subsequent literature could lead to the view that the administrative dimensions of multilateral environmental agreements ('MEAs') have finally received the level of analysis that Churchill and Ulfstein thought wanting 12 years ago.[3]

[1] R.R. Churchill and G. Ulfstein, "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law" (2000) 94 *American Journal of International Law* (2000) pp. 623-659.

[2] G. Loibl, "The Proliferation of International Institutions Dealing with International Environmental Matters", in N.M. Blokker and G. Schermers (eds.), *Proliferation of International Organisations: Legal Issues* (2001) pp. 151-175; J. Brunnée, "COPing with Consent: Law-Making Under Multilateral Environmental Agreements", 15 *Leiden Journal of International Law* (2002) pp. 1-52; M. Fitzmaurice, "Consent to be Bound – Anything New Under the Sun?", 74 *Nordic Journal of International Law* (2005) pp. 483-508; L.K. Camenzuli, 'The Development of International Environmental Law at the Multilateral Environmental Agreements' Conference of the Parties and its Validity' (2007), available <http://cmsdata.iucn.org/downloads/cel10_camenzuli.pdf>; T. Gehring, "Treaty-Making and Treaty Evolution", in D. Bodansky, J. Brunnée and E. Hey (eds.), *The Oxford Handbook of International Environmental Law* (2007) pp. 469-497; A. Wiersma 'The New International Law Makers? Conferences of the Parties to Multilateral Environmental Agreements", 31 *Michigan Journal of International Law* (2009) pp. 231-287.

[3] Churchill and Ulfstein, *supra* note 1, at 625. The importance of administrative arrangements had been appreciated before 2000. However, Churchill and Ulfstein's article is seminal in relation to a number of topics; principally the law making powers and personality of COPs (and their counterparts). For example *see* S. Lyster, *International Wildlife Law* (1995) at 12-14, 110-11, 123-24; M.J. Bowman, "The Ramsar Convention Comes of Age", 42 *Netherlands International Law Review* (1995) pp. 1-52, at 33-43; J. Werksman, "The Conference of Parties to Environmental Treaties", in J. Werksman (ed.), *Greening International Institutions* (1996) pp. 55-68; R. Lefeber, "Creative Legal Engineering", 13 *Leiden Journal of International Law* (2000) pp. 1-9.

Nevertheless, the academic attention that has been devoted to institutional arrangements has predominantly focused upon the legal significance of outputs from conferences of the parties (or their counterparts). This is not a criticism, not least because the question of legal significance has become a pressing issue given the growing corpus of decisions, recommendations, and resolutions of conferences of the parties (hereafter, 'COPs'). That accumulation has accelerated through the adoption of more environmental treaties since the 1970's and the now standard practice of establishing plenary bodies under these agreements. It is unwise to immediately dismiss this sizeable output, especially since COP decisions can be of great significance.

But there is more that deserves to be investigated and diverse paths that can be pursued, for example on such matters as compliance, global administrative law and systems theory. The current paper, using the 1971 Convention on Wetlands of International Importance[4] as the main example, looks to introduce a new path; one which if ultimately followed in full will serve to add significant depth to our understanding and critique of administrative processes and the sources of international law. Simply stated, there is a need to investigate how delegates prepare for COPs and how they then participate.

2. Methods and Contributions

2.1. Focus on 'Internal Modalities'

Whilst the research question divides into two parts (preparation and participation), the main endeavour will be to identify and analyse the sets of rules, customs and ethics that operate within delegations when they undertake these stages. A short-hand term will be used to encapsulate these sets: 'internal modalities'. Internal modalities exist within many groups in society beyond delegations to COPs. Take, for example, professional team sports. All of the teams will operate an internal modality tailored towards an individual goal. Such goals can vary, for example winning a league or cup, or financial survival. Setting this modality will be the responsibility of the team's director or owner. For example, they will establish ways of generating income to fund the team, and recruit managers with responsibility for developing tactics for games. At the same time, other rival teams are doing likewise. Significantly, it is during the game that these modalities become entwined and affect each other, ultimately producing a result.

Two key features of internal modalities are, first, that they can be adjusted, and second, there will often be external rules that shape these practices. For example, the governing body of the sport in question must protect the interest of the sport, which includes ensuring that there are participants, that there are rules to the competition and that there is public interest.

The internal modalities of delegations to COPs behave in a similar way and setting. Whilst competitiveness is not necessarily present in every plenary meeting under an MEA, delegations will have their own internal modalities governing how they prepare for meetings and how they will participate in the work of a session. These will be set according to their objectives and these modalities will ultimately become entwined with those of other states during COPs. What is more, autonomy to determine the nature of that internal modality is also constrained to the extent that international law, the treaty establishing the COP and rules of procedure must be respected and followed. As matters stand, no-one has identified,

[4] Convention on Wetlands of International Importance Especially as Waterfowl Habitat (adopted 2 February 1971, entered into force 21 December 1975) 996 UNTS 245 and commonly referred to as Ramsar after the Iranian town in which the treaty was adopted (hereafter, 'Ramsar').

described and assessed those internal modalities, or reviewed the external forces that can shape them.

The intention of this paper is to see what can be revealed about the internal modalities surrounding preparation and participation based upon existing scholarship and records. As will be seen, modest progress can be made on the external influences but information on the internal modalities themselves is harder to locate. Furthermore, and as a reflection of the paucity of work that has been undertaken in this area, the available sources of information still leave many fascinating questions unanswered. Ultimately a different methodology based upon interviews may yield new insights and take a step towards answering these questions.

2.2. Placing the Research

Many who research public international law concentrate upon the output of multi-state relations and particularly the formal sources of international law, i.e. treaties, non-binding initiatives, resolutions of COPs, amendments to appendices, and judicial and arbitral pronouncements. Such sources for the purposes of this paper are regarded as the 'foreground' of international environmental law. Theories and rules concerning the normative force of this foreground,[5] and the best way to draw states towards compliance,[6] have been developed. However, there is a lack of realism in focusing only upon these acts since this misses much of importance that came before and shaped those outputs.[7] Some international lawyers may feel that activities on these planes that lie behind the foreground should be the preserve of politics and international relations scholars. Certainly those focused solely upon the task of interpretation of an international legal text will only be interested in antecedent events to the extent that such activity is recognised as a source for treaty interpretation.[8] Nevertheless, and additional to the pursuit of realism, there are good reasons for legal scholars to analyse antecedent processes like decision making at COPs. For example, by introducing a shift in the focus of enquiry to activity on these planes – the 'background' (national policies and practices, like preparation) and 'middle-ground' (the interactions of states through, for example, participation at COPs) – a richer appreciation of the way MEAs mature and evolve will be provided. Furthermore, new themes (e.g. internal modalities) found on these planes should be opened up for challenge or sharing as best practice.

Such investigation will also serve to remind others that, as Daniel Bodansky says, 'in the end, decisions are made not by abstract entities, but by individuals who are motivated by a multitude of factors: promoting what they believe to be in the national interest, promoting

[5] *See*, for example, Churchill and Ulfstein, *supra* note 1; Brunnée, *supra* note 2; Camenzuli, *supra* note 2; Fitzmaurice, *supra* note 2; and Wiersma, *supra* note 2.

[6] *See*, for example, T.M. Franck, *The Power of Legitimacy Among Nations* (1990); J. Cameron, J. Werksman and P. Roderick (eds.), *Improving Compliance with International Environmental Law* (1996); M.A. Fitzmaurice and C. Redgwell, "Environmental Non-Compliance Procedures and International Law", 31 *Netherlands Yearbook of International Law* (2000) pp. 35-65; W. Bradford, "International Legal Compliance: Surveying the Field", 36 *Georgetown Journal of International Law* (2005) pp. 495-536; U. Beyerlin, P.T. Stoll and R. Wolfrum (eds.), *Ensuring Compliance with Multilateral Environmental Agreements* (2006); D. Bodansky, J. Brunnée and E. Hey, *The Oxford Handbook of International Environmental Law* (2007), Part VII; M. Fitzmaurice, D.M. Ong and P. Merkouris (eds.), *Research Handbook on International Environmental Law* (2010), Part VI; J. Brunnée and S.J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (2010).

[7] D. Kennedy, "Challenging expert rule: The politics of global governance", 27(5) *Sydney Law Review* (2005) pp. 5-28, at 7.

[8] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 8 ILM (1969), 679 (hereafter 'VCLT'), Article 31 and 32.

their own interests, doing what they believe is right, doing what they believe the law requires, and so forth.'[9]

Finally, and without the need to favour any one school of thought, the research might inform theories surrounding the likelihood of states and private individuals following a particular decision or direction. For example, under Brunnée and Toope's interactional theory, law's value lies in the sense of obligation it generates.[10] That obligation is generated where states and actors perceive law making to be legitimate.[11] In their theory, legitimacy flows from three factors:[12] (i) shared understandings of the role of law and particular norms; (ii) a norm substantially adhering to criteria of legality, such as the fact a norm must not demand the impossible;[13] and (iii) reinforcement of the norm through a continuing practice of legality.

COPs play a key role in nurturing obligation, as the forum for building a community of practice and sustaining shared understanding and interaction within it.[14] As will be seen, COPs may well also be the body responsible for producing or developing norms that will need to adhere to the criteria of legality. Given this, it is possible to see how research on preparation and participation might inform this theory of obligation. For example, the community of practice operating under an MEA thrives through nourishment from others existing at the national and international levels.[15] This means preparation that facilitates communication and interaction with these communities ought to be valuable. Preparation might also establish that which is practicable and consistent with national and international commitments already undertaken by a state, thereby delivering on elements of legality. Finally, the findings on participation might be such that they too indicate a propensity to deliver on the criteria of legality, and generate genuine and shared understandings.

As an alternative example, and looking to assimilate a number of schools, Bodansky regards states and individuals as being responsive to substance, legitimacy and/or pressure from a third party [16] and it is easy to see how this research could relate to two of his ideas. Looking at the first of these, the suggestion is that if the substance of a direction is convincing on its merits this can lead to particular behaviour. This may be because it is interpreted as being in the interest of a state or the individual whose acts count as those of the state.[17] Nevertheless, a decision may also be rationally persuasive for other reasons, for

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[9] D. Bodansky, *The Art and Craft of International Environmental Law* (2010), at 115. Vaughan Lowe also observes 'We speak of states acting. States do not, of course, act: people act for them'; A.V. Lowe, *International Law* (2007), at 20. Jutta Brunnée and Stephen Toope comment that despite a focus on 'states', the salient interactions are actually those between individuals or groups of people like diplomats or scientists; Brunnée and Toope, *supra* note 6, at 6.

[10] Brunnée and Toope *ibid.*, at 55. Franck was also similarly interested in theories of legal obligation and he sought an understanding of the formal characteristics of norms that result in 'compliance pull'; *see* Franck , *supra* note 6.

[11] Brunnée and Toope, *ibid.*

[12] *Ibid*, at 53-54.

[13] *Ibid*, at 26. The eight criteria of legality are taken from Lon Fuller's theory concerning the internal morality of law, namely: (i) generality, (ii) promulgation, (iii) prospective effect, (iv) clarity, (v) consistency, (vi) realistic demands, (vii) stability, and (viii) congruency between the rules as promulgated and as administered; L.L. Fuller, *The Morality of Law* (1969), at 39.

[14] Brunnée and Toope, *ibid*, at 356.

[15] *Ibid*, Chapter 2.

[16] D. Bodansky, "Legitimacy", in D. Bodansky, J. Brunnée and E. Hey (eds.), *The Oxford Handbook of International Environmental Law* (2007) pp. 706-723.

[17] Indeed, Vaughan Lowe notes that given the dominant role of consent within international law, states are often agreeing to be bound by rules that it is already believed by the government serve the national interest, whilst those civil servants and ministers charged with implementing these commitments personally find compliance the safer option; Lowe, *supra* note 9, at 19-21.

example when it is felt to be justified by science, or because of fairness.[18] The degree of substantive persuasiveness is therefore partly dependent upon the formulation of a decision; that is the ability of the state to identify its interests and then (if needed) influence the content of a decision in the run-up to its adoption.

Of course, a decision might be followed, regardless of a state's stance on its persuasiveness, because of pressure from a third party against a state.[19] This relies upon an external power or force. As such, the relevant force comes after the production of a decision, and might include threats of trade sanctions,[20] or measures imposed by COPs as part of compliance procedures. It is anticipated that looking at preparation and participation will not offer many insights into the exercise of such power.

Finally, even in the absence of power, and even if an individual is not persuaded by the substance of a decision, they may still follow it because of the perceived legitimacy of the decision-maker or decision-making process.[21] Therefore, legitimacy in this sense is also derived from events that are often antecedent to the passing of a decision. For example, a law may seem unreasonable, but is followed because it is perceived as having been properly enacted; or the grounds for a recommendation hard for an individual to appreciate, but they remain inclined to accept the word of the decision-maker so they act in accordance with the direction. Legitimacy and its effects in this sense are dependent upon the perception of the target audience. Thus research in this field should seek to reveal the internal modalities of preparation and participation, enabling perceptions as to legitimacy of the COP process to be checked and better informed.

3. COPs – Connecting the Foreground and Background

Broadly conceived COPs can be seen as the conduit through which the national position of contracting parties can be represented and advanced on the way towards adopting decisions, recommendations or resolutions. Thus they are the middle-ground link between part of the background and foreground of international environmental law. Some detail on this role is desirable in order to clarify the demands upon delegates when preparing for and attending COPs, and its impact upon the eventual research methodology.

3.1. The Development of COPs

Many MEAs have chosen to establish dedicated institutional arrangements instead of relying upon the services of international organisations.[22] These administrative structures comprise a number of component parts, usually incorporating a Secretariat, a COP, an interim committee of some contracting states to assist the Secretariat between plenary sessions, a scientific advisory group and *ad hoc* working groups instructed to work on particular topics. The COP is therefore one part of this set-up, although its centrality to the functioning of the legal regime means that almost all of the business performed under the auspices of a convention comes before or originates from this plenary body. Indeed, some MEAs explicitly recognise

[18] Bodansky, *supra* note 16, at 707.
[19] *Ibid.* The EU presents a special case in that COP decisions may be directly embraced by EU legislation and thereby subject to the enforcement mechanisms available within the union; *see* for example, the incorporation of COP decisions made under the Convention on International Trade in Endangered Species, *supra* note 54, into EU law under Council Regulation (EC) 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade therein [1997] OJ L61/1
[20] Bodansky, *supra* note 16, at 707.
[21] *Ibid*, 707-8.
[22] For an indicative list, *see* Churchill and Ulfstein, *supra* note 1, at 623-4.

the hierarchical superiority of the COP, whilst others imply such a hierarchy where subsidiary bodies are ordered to act under the guidance of the COP.[23]

3.1.1. Diplomatic Conferences, Intergovernmental Organisations and COPs

Historically speaking, COPs as an institutional phenomenon represent the latest development in the continuing evolution of international cooperation. Philippe Sands and Pierre Klein describe how international conferences were increasingly used in the nineteenth century as a solution to the limitations of interaction through diplomatic embassies.[24] They are characterised by their temporary nature. Arnold Tammes evoked this fleeting existence when describing them as 'a preparatory phase in a law making process; a passing event doomed to be buried in archives together with all its rules and its organisational structure and leaving behind nothing except the living results'.[25] This, in turn, gave rise to one of the limitations to such conferences. This is an efficiency deficit, since another conference (needing new rules of procedure and a secretariat) was required whenever a new problem arose.[26] Other limitations centred upon a lack of flexibility in debates, an 'invitation only' approach to participation and the nineteenth and early twentieth century practice of requiring unanimity in voting on issues of substance.[27]

The response was the formation of a range of permanent unions of interested parties. They have taken many forms including unions of private individuals and unions of states. Much attention has been focused on inter-governmental organisations ('IGOs') – in particular those that are a part of the United Nations system. As part of the post-war rejuvenation of inter-state relations, the UN bodies have merited sustained consideration and much research has been completed on them.[28]

Even though IGOs represented a more efficient, permanent and regularised means for states to perform functions that they could not individually undertake, interest in expanding their number dropped off. It has been claimed that this was in part because, in a context of continuing conflicts, there were doubts about the effectiveness of IGOs, and because the supranational authority of IGOs was inconsistent with increasing assertions of property rights, particularly over environmental resources.[29] Establishing new IGOs therefore fell out of favour. This, however, coincided with the expansion of international environmental treaty law. For these MEAs there remained a well-known need for regular meetings which could not be met by temporary diplomatic conferences.

It is appreciated that regular meetings of the contracting parties prevent initiatives from stalling or being ignored.[30] Furthermore, environmental knowledge is continually evolving, even after an MEA has been concluded. Best practice can change, and the status of species may become more or less endangered. Additionally, treaty negotiations can be difficult as states may be wary about the economic and social costs of action, and argue over

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[23] *Ibid*, 631.

[24] P. Sands and P. Klein, *Bowett's Law of International Institutions* (6th ed., 2009), at 1-2.

[25] Quoted in R. Sabel, *Procedure at International Conferences* (2nd ed., 2006), at 1. Thomas Gehring, likewise, describes diplomatic conferences as being 'convened when a group of actors so desires, and dissolved upon the adoption of the final act of the conference to which the treaty is attached.'; Gehring , *supra* note 2, at 470.

[26] *Ibid*, at 3. Bodansky, *supra* note 9, at 120.

[27] C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd ed., 2005), at 2-3; Sands and Klein, *supra* note 24, at 3-4..

[28] B.A. Simmons and L.L. Martin, "International Organizations and Institutions", in W. Carlsnaes, T. Risse and B.A. Simmons (eds.), *Handbook of International Relations* (2002) pp. 192-211, at 192-193.

[29] *Ibid.*,193.

[30] Simon Lyster famously called agreements that do not hold such sessions 'sleeping treaties'; M.J. Bowman, P.G.G. Davies and C. Redgwell, *Lyster's International Wildlife Law* (2nd ed., 2010) at 533.

who should take on the greatest burden when addressing a threat. Limited political agreement may therefore be the only possibility coupled to acceptance that further refinement will take place as greater consensus becomes possible.[31] Thomas Gehring concludes that diplomatic conferences for negotiating an MEA simply cannot be expected, under such conditions, to produce a 'complete contract' from the start.[32] Environmental problems, therefore, demand regimes that are sufficiently malleable to respond to subsequent and rapid developments.[33]

COPs were therefore designed to provide flexibility and to overcome the failings of diplomatic conferences and IGOs.[34] Consequently, since the 1971 Convention on Wetlands of International Importance (hereafter 'Ramsar')[35] was the first to employ a COP,[36] they have been the favoured approach.

3.1.2. Implications for the Proposed Research

The emergence of COPs has had some interesting consequences. First, international relations scholars have had cause to move their focus away from 'international organisations' and to re-train it upon 'international institutions'; a field defined in broader terms to encompass the new forms of international cooperation.[37] For international environmental law scholars, one question has been whether international institutional law applies to COPs.[38] In the context of this project, the significance stems from the fact that there are very few resources on the internal modalities for COP preparation and participation, compared to those available on diplomatic conferences and IGOs. Is it therefore appropriate to look for ideas and guidance from these resources when pursuing research into participation and preparation for COPs?

This resolves into a familiar question: are COPs international organisations, negotiating conferences, or something distinct from both of these? As others have found, a definitive answer to this is elusive, not least since, as Nigel White observes, a precise definition of an international organisation is impossible.[39] Indeed there is some divergence on the principal features of such IGOs.[40] Nevertheless, in attempting to determine whether COPs are, or are closely related to, IGOs, Henry Schermers and Niels Blokker's definition is a common starting point. They define international organisations as 'forms of cooperation founded on an international agreement creating at least one organ with a will of its own, established under international law'.[41] Most writers then begin by recognising that COPs bear some similarities to this conception of IGOs. Churchill and Ulfstein observe that they are self-governing creatures, born of treaties, and that together with their secretariats and committees they amount to more than a diplomatic conference.[42] Nevertheless, the COPs'

[31] Churchill and Ulfstein, *supra* note 1, at 628.
[32] Gehring, *supra* note 2, at 474.
[33] Churchill and Ulfstein, *supra* note 1, at 628.
[34] There are other known benefits over IGOs, including savings from not requiring a permanent head-quarters; *ibid*, at 630; H. Schermers and N. Blokker, *International Institutional Law* (4th ed., 2003) at 246.
[35] *Supra* note 4.
[36] Although such meetings under Ramsar were originally termed 'Conferences on the Conservation of Wetlands and Waterfowl' and are now termed 'Conferences of the Contracting Parties'; Ramsar, Article 6(1).
[37] Simmons and Martin, *supra* note 28, at 192-4. As Simmons and Martin also note, there was an intervening period where the research enquiry was framed around "international regimes", *id.*
[38] *See* on implied powers, Churchill and Ulfstein, *supra* note 1, at 631-634.
[39] N.D. White, *The Law of International Organisations* (2nd ed., 2005) at 1.
[40] *cf* White, *ibid*, at 1-2, Amerasinghe, *supra* note 27, at 10, and Sands and Klein, *supra* note 24, at 15-16.
[41] Schermers and Blokker , *supra* note 34, at 26.White and Amerasinghe contest the necessity of such autonomous will, albeit for differing reasons; White, *supra* note 39, at 1-2; Amerasinghe, s*upra* note 27, at 10-11.
[42] Churchill and Ulfstein, *supra* note 1, at 623 and 633. Rather more contentious is whether COPs have a will of their own; Loibl, *supra* note 2, at 167 *cf* P. Birnie, A. Boyle and C. Redgwell, *International Law and the Environment* (3rd ed., 2009) at 87.

narrow focus upon specific problems, with less scope to adapt to other purposes, means that they were not IGOs in a traditional sense. Thus, Ulfstein later confirmed that COPs 'are not merely intergovernmental conferences, since they are established by treaties as permanent organs… while they also differ from traditional [IGOs].'[43]

If instead a purposive and practical approach is adopted for comparing COPs with IGOs and diplomatic conferences, the boundaries between all three seem less clear. Whilst each developed from the short-comings described, the dynamics between the parties and the need to represent the national interest in a multi-lateral context remained the same. Thus it is possible to claim that COPs are in practice like both IGOs and diplomatic conferences. Thus, Philippe Sands can regard COPs as 'in effect' international organisations[44] and Churchill and Ulfstein that the functions of COPs are similar to IGOs thereby justifying the extension of international institutional law.[45] Equally, Jacob Werksman is correct in observing that 'the participants and the *modus operandi* of the states involved in an international negotiating conference and a COP [are] outwardly similar,' with the same people meeting in the same room discussing the same issues.[46]

Given such similarities in terms of state concerns and motivation for engaging in multi-lateral discussions, it is felt that the literature on IGOs and diplomatic conferences should be considered as informative for research on COPs. That said caution will be necessary where rules of procedure differ.

3.2. The Power of COPs

It was noted that COPs were intended to offer monitoring, review and development opportunities for environmental regimes. This breaks down into more specific powers, but there remains considerable variety as to the extent of the powers awarded to the COPs and the tasks with which they may be presented. This variety exists between MEAs and also between plenary sessions under the same convention. Broadly speaking, the responsibilities of the COP cover (i) systems management, (ii) strategic planning, (iii) reviewing compliance and progress, and (iv) obligation development.

3.2.1. Systems Management

These responsibilities, given that they focus upon maintaining the administrative support and operating systems of an MEA, are primarily internal in effect. For example, delegations will work together as part of exercising the COPs authority to set budgets, adopt rules of procedure, establish *ad hoc* committees, elect states to executive committees, and appoint a body to undertake the role of a Secretariat.

3.2.2. Strategic Planning

In order to reach the long term objectives set by the majority of MEAs, short and medium term programming is necessary. This priority and policy setting is a common responsibility for COPs, although as part of this they will often delegate detailed drafting and discussions to supporting *ad hoc* and scientific committees. The extent to which delegations at COPs then rework the output from these committees, or simply accept their proposals at face value, is unknown and should be an issue requiring investigation in any subsequent research project.

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[43] G. Ulfstein, "International framework for environmental decision making" in M. Fitzmaurice, D. Ong and P. Merkouris (eds.), *Research Handbook on International Environmental Law* (2010) pp. 29-47.
[44] P. Sands, *Principles of International Environmental Law* (2nd ed, 2003) p. 92.
[45] Churchill and Ulfstein , *supra* note 1, at 633.
[46] Werksman, *supra* note 3, at 57. *See also* Birnie et al., *supra* note 42, at 87: '… the conference of the parties… is in substance no more than a diplomatic conference.'

3.2.3. Reviewing Compliance and Progress

The possibility of stagnation is one of the major reasons for the inclusion of regular COPs. Thus many are charged with reviewing implementation and progress for their founding conventions.[47] Diversity begins to appear in the powers conferred upon the COP to identify and respond to instances of non-compliance with obligations. Techniques for promoting compliance range from reporting and capacity building, through verification and inspections, to non-compliance adjudications and sanctions.[48] COPs differ with regard to how far along this continuum their roles and powers extend. The majority are engaged in reviewing the periodic reports on implementation which contracting parties are often obliged to submit.[49] In contrast just a few are involved on those rare occasions where non-compliance adjudications and suspension of rights and privileges are part of the MEA regime.[50]

3.2.4. Development of Substantive Obligations

The involvement of COPs in the development of the substantive obligations for contracting parties has been the subject of extensive academic analysis. However, the details of the debates surrounding any law making powers of the COP need to be delayed until consideration is given later in this paper to the composition of delegations. Here it is simply necessary to observe that the plenary body to MEAs can be authorised to develop the substantive obligations in certain ways.[51] A COP can have all or a selection of the following powers, namely to: adopt amendments to the original treaty;[52] adopt protocols and thereby add to the substantive obligations of the original agreement;[53] amend annexes to the treaty;[54] adopt interpretations, or rules governing a desired mechanism, pursuant to an explicit request in the MEA;[55] adopt interpretations for the operation of the convention that are not explicitly called for in the founding treaty.[56]

These powers may be exercised occasionally or regularly, and thus in the latter situation be a recurring feature on the agenda of a COP. The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Fauna ('CITES)[57] exemplifies this, where the appendices are continually amended, thereby altering the reach of the trade controls introduced under that agreement. However, there can still be differences between such work. For example, and returning to CITES, separate proposals for different species to be include in CITES' appendices may be more politically or economically sensitive for one species than

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[47] *See* for example, the Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 31 ILM (1992), 851 (hereafter 'UNFCCC'), Article 7(2)(e). *See* also the summary of COP duties and powers provided in Camenzuli , *supra* note 2 for an indication of how often this role is given to the COP.

[48] *See* Fitzmaurice and Redgwell, *supra* note 6.

[49] *See* for example Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 31 ILM (1992), 818 (hereafter 'CBD'), Article 23(4)(a).

[50] *See* for information on formal non-compliance procedures, J. Brunnée, "Enforcement Mechanisms in International Law and International Environmental Law", in U. Beyerlin, P.T. Stoll and R. Wolfrum (eds.), *Ensuring Compliance with Multilateral Environmental Agreements* (2006) pp. 1-23, at 18.

[51] *See* Churchill and Ulfstein, *supra* note 1, at 636-642.

[52] *See* for example, Ramsar, Article 10*bis.*

[53] *See* for example, UNFCCC, Article 17(1) and the Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 37 ILM (1998) 22 pursuant to this provision.

[54] *See* for example, Convention on International Trade in Endangered Species of Wild Fauna and Fauna (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243 (hereafter 'CITES'), Article XI(3)(b).

[55] The Montreal Protocol authorised the plenary body thereto to interpret the term 'agreed incremental costs'; Montreal Protocol, Article 10(1).

[56] *See* for example, the interpretation of the term 'Introduction from the Sea' provided in Resolution 14.6 of the COP to CITES.

[57] *Supra* note 54.

another.[58] The stakes for delegations may therefore vary depending upon the context in which the powers to alter substantive obligations are being used.

3.2.5. Further Implications for the Research

The above gives a deeper appreciation of the diverse demands that are placed upon delegates to COPs and the variety of matters that preparation and participation may need to address. However, these powers of plenary bodies to MEAs also raise methodological implications for the research. What has been revealed is that there is great diversity both within and amongst COPs and their work, such that any research into the internal modalities of preparation and participation must exercise caution if making comparisons and claiming generality when drawing conclusions. The distinctive roles of COPs mean that they can justifiably be researched in isolation, however findings do not necessarily apply to a different plenary body under another MEA.

4. The Internal Modalities for Preparation

In the remaining sections, the internal modalities of COP delegations will be explored as far as possible. This will be approached by assessing the external rules that partially constrain the autonomy of states to set their own modalities. Thereafter further information will be sought in the writings of former delegates and academics, as well as in records maintained under MEAs. This reveals interesting insights but also leads to more intriguing questions. Furthermore, the Ramsar Convention will be used to illustrate these constraining rules and to exemplify the unanswered questions that merit subsequent research. Additional formative insights into the previous modalities of the UK delegation to Ramsar are also offered in the light of discussions with one long-serving representative.[59] Whilst there is obviously a need to verify the information obtained, these discussions have highlighted the potential such a research methodology offers for insights into modalities that are not evident in official documentation.

4.1. Preparation in Context and External Constraints

With respect to preparation, this takes place in a context where the primary actors under international law (states) are, as Bodansky says, 'complex entities, with many constituent parts, often with very different interests and beliefs of their own.'[60] These parts can include an executive branch of government, legislative and judicial branches, federal governments and private actors.[61] There can be great diversity between the interests of these branches and also within each of these parts.[62]

Implementation of an MEA will be led by a particular ministry and it is this body that will set the tone and priorities for participation. This may be a mixed-ministry or one more dedicated to environmental protection. Furthermore, the lead ministry may be engaging with a COP because of its own national agenda; looking for international sanctioning for a position

[58] Recent contentious examples include tuna and the ongoing issue of ivory trading. *See also* Ulfstein, *supra* note 43, at 31-32.
[59] Interview with David Stroud, Senior Ornithologist, Joint Nature Conservation Committee (Peterborough, UK, 30 August 2011). David Stroud has represented the UK at a number of COPs, including Ramsar.
[60] Bodansky, *supra* note 9, at 112.
[61] *Ibid*, at 113-115.
[62] *Ibid*.

it wishes to adopt in national debates.[63] Alternatively, the delegation may be looking to exploit any informal hierarchy of the MEAs to bring forward debates in a 'sub-ordinate' regime.

It might then be thought that best practice for preparing delegations for COPs would be to engage with all of the noted branches as part of defining the national interest on a given issue.[64] Nevertheless, this is difficult given the limited time available to consult groups, and the diversity of political, commercial and personal interests which may be irreconcilable. What is more, making environmental policies democratically accountable is near impossible as national votes cannot be taken on every issue being listed on a COP agenda. Thus modalities for selecting key stakeholders are significant since they affect who has an input and will feel engaged with the COP process. However, as Bodansky observes, there may be no right to vote for these stakeholders so they do not have any real decision making powers themselves.[65] A significant threat to the persuasiveness and legitimacy of a decision therefore comes from those excluded.

There are few external controls on state modalities for consultations as part of preparing for COPs. Wide consultation is promoted in Principle 10 of the 1992 Rio Declaration which recommends that environmental issues are best handled with the participation of all concerned citizens.[66] Building upon this, the 1998 Aarhus Convention[67] in Article 3(7) requires the 44 contracting parties[68] to promote transparency and participation in international environmental decision-making processes. This provision has been developed in the Almaty Guidelines, which observe that 'public participation generally contributes to the quality of decision-making on environmental matters in international forums by bringing different opinions and expertise to the process and increasing transparency and accountability'.[69] The guidelines go on to say participation should be as wide as possible, highlighting members of the public most directly affected by an environmental issue, public-interest organisations, and those causing, or contributing to, or able to alleviate, a problem, as deserving of particular consideration.[70]

A final, less direct, external constraint upon the process of preparing for a COP is provided by the rules of procedure. These will have a practical effect upon preparation since they set timeframes for submission of proposals for any agenda, when the agenda will be finalised, and when full documentation will be circulated relating to each issue being discussed. For example, the Rules of Procedure for the Ramsar COP provides that the provisional agenda and dates for the plenary meeting will be circulated one year in advance.[71] The documentation providing detailed information on the proposed agenda is circulated three months before the opening of the COP.[72] This means that there is limited time to consult the state departments, public bodies and stakeholders.

4.2. UK Preparation for Ramsar COPs

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[63] *See* for example, references to the Inter-Maghreb Highway in Ramsar Recommendation 5.1, which were specifically requested by the delegation of Mauritania itself in Workshop A (Conservation of Listed Sites) held at COP5.
[64] *See* Brunnée, *supra* note 2, at 10-11.
[65] Bodansky, *supra* note 16, at 717.
[66] Rio Declaration on Environment and Development 31 ILM 874.
[67] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 38 ILM 517.
[68] From continental Europe and the Commonwealth of Independent States.
[69] Second Meeting of the Parties, Almaty, Kazakhstan, Decision II/4, [28].
[70] *Ibid*, at [30].
[71] Rules of Procedure (2005) Ramsar COP10 DOC.2 Rev.1, Rule 5.
[72] *Ibid*, Rule 10.

Implementation of Ramsar in the UK is entrusted to the National Ramsar Committee.[73] This body has operated as two separate parts since the late 1990s and is aligned with the UK's Natura 2000 programme being pursued under EU directives. One part – the Natura 2000/Ramsar Steering Committee ('NRSC') – is comprised of representatives from (i) government departments such as DEFRA, and the Department of Energy and Climate Change, (ii) the devolved administrations, and (iii) public bodies like Natural England and the Joint Nature Conservation Committee.[74] The NRSC is chaired by DEFRA and meets annually but otherwise exists in a virtual environment whereby regular communication is maintained via email and the internet. This means face-to-face meetings are not necessary to ensure integration as Ramsar information can be distributed electronically and views canvassed from around the country through a central co-ordinator.

When the documentation for an upcoming Ramsar COP is released, DEFRA generates a position document covering the resolutions, which is circulated to designated individuals across government and public bodies. The precise circulation list is not known to the author. It might be expected that those who participate in the NRSC will be included, although this could be investigated through further interviewing with DEFRA. Of additional interest would be the level of seniority of the individuals consulted and how this compares to preparation for other MEAs. Whilst input at more senior levels may bring welcome ministerial backing for Ramsar implementation, it can also unduly politicise discussions on resolutions.[75] Again, this is conducted electronically, and indicates that states ought not to be criticised for failing to hold a face-to-face meeting to debate agenda items if there are other more efficient methods available through technology.

Consultations outside of government include coordination at the EU level, as well as communication through the Natura 2000/Ramsar Forum. The latter group comprises representatives from the NRSC constituents, plus members invited by the NRSC. No information is provided with respect to how an NGO receives an invite, although the Terms of Reference suggest the list should be reviewed every year.[76] Permanent members include 15 NGOs, such as the Wildfowl and Wetlands Trust, UK Major Ports Group, and the National Farmers Union.[77] The forum is a sounding board for their views, with members entitled to add agenda items to meetings. The forum represents a new channel for consultation with NGOs. Previously, delegates had arranged to meet during Ramsar COPs with UK NGOs that had sent representatives, in order to discuss their respective positions and to resolve any disagreements if possible. This tended to be a small number of NGOs – predominantly the RSPB and the Wildfowl and Wetlands Trust. The forum marks an expansion in the scope of consultation and brings forward in time the opportunity to finalise DEFRA's position document.

The end product of the UK preparation stage is a document that could allow for wide government, EU and NGO consultation, and establishes the 'state' position. The document can then be carried by all delegates to the COP and, if they are required to engage in discussions on any resolution, they have a point of reference for the national stance. Establishing the extent to which other nations adopt a similar approach or have found alternative ways to establish the national position would be of value.

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[73] This and much of the information in this section was identified after discussions with David Stroud; *supra* note 59.

[74] Natura 2000 and Ramsar Steering Committee Terms of Reference (amended November 2010) available <http://archive.defra.gov.uk/rural/protected/internationally-designated-sites/n2kr-sc-tor-1011.pdf>.

[75] *See* in a marine pollution context Bodansky, *supra* note 9, at 113.

[76] Natura 2000 and Ramsar Forum Terms of Reference available <http://archive.defra.gov.uk/rural/protected/internationally-designated-sites/n2krf-tor-0810.pdf>.

[77] *Ibid*.

5. Composition of Delegations

If a contracting party elects to send a delegation to a COP,[78] it needs to decide during its preparation who will participate as a delegate. This decision, however, will have a sizeable impact upon the way the delegation participates at the COP and might initially better be thought of as an important part of the modalities of participation. The selection of delegates and the size of delegations is the subject of limited external controls.

5.1. External Controls: Full Powers, Credentials and COPs

From the early stages of a COP, an *ad hoc* committee will review the "credentials" of the delegates.[79] For example, the procedural rules for the plenary meetings held under the Convention on Biological Diversity require that any delegation be comprised of a designated head and other accredited people.[80] That accreditation is to be proved through delivery of credentials issued by the Head of State or Government or by the Minister of Foreign Affairs.[81] Similarly, CITES demands that delegations be made up of a representative, alternative representatives (who may take the representative's place at any time), and advisors.[82] The representative and alternatives must have been granted powers by 'a proper authority, i.e. the Head of State, the Head of Government or the Minister of Foreign Affairs, enabling him/her to represent the Party at the meeting.'[83] Until such credentials have been supplied and approved by the designated committee at the COP, the representative may not vote on any proposal.[84] This restriction on the right to vote is of some importance given the potential significance to international trade of the regular adjustments to the CITES appendices.[85]

Few have considered the level of authority substantiated by the credentials requested by COPs. International lawyers will be familiar with the term, albeit in the different context of IGOs and diplomatic conferences.[86] They will also be used to contrasting the idea with that of "full powers". Credentials support less extensive authority compared to full powers. In the context of diplomatic conferences, credentials are understood as granting authority to the bearer to engage in three activities: negotiating a treaty, voting to adopt the final version of the text and signing a final act.[87] These stages, whilst important in the process of creating a treaty, do not result in a binding agreement. This is because a state must first express its

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[78] Contracting parties have the right to send delegations, but there is no obligation to attend. In the context of IGOs, possibly only a systematic policy of refusing to attend might, therefore, lead to claims about a lack of commitment to the objectives of the regime; Schermers and Blokker , *supra* note 34, at 194-5.

[79] This process might continue for much of the plenary as credentials come in late.

[80] *Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity* (as adopted and amended pursuant to Decision I/1 and V/20), Rule 16, available <http://www.cbd.int/doc/legal/cbd-rules-procedure.pdf>.

[81] *Ibid*, Rule 18.

[82] *Rules of Procedure of the Conference of the Parties* (last amended 2007), Rule 1, available <http://www.cites.org/eng/cop/E14-Rules.pdf>.

[83] *Ibid*, Rule 3(1).

[84] *Ibid*, Rule 3(4) and 24. This rule allows the Representative to still provisionally participate in the sessions.

[85] *See* Section 2.3.4 of this paper.

[86] For analysis of credentials in the context of IGOs, and their part in arguments about legitimate and representative governments, *see* White, *supra* note 39, at 122-126. As to credentials in the context of IGOs *see* Sabel, *supra* note 25, at 58-67.

[87] A. Aust, *Modern Treaty Law and Practice* (2nd ed., 2007) at 76; M. Fitzmaurice, "The Practical Working of the Law of Treaties", in M.D. Evans (ed.), *International Law* (2nd ed., 2006) pp. 187-213, at 191.

consent to be bound. Under the Vienna Convention on the Law of Treaties ('VCLT')[88] this consent to be bound can only be expressed by way of 'signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed'.

In comparison, 'full powers' are:

> A document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the state to be bound by a treaty, or for accomplishing any other act with respect to a treaty.[89]

The issuing of 'full powers' therefore covers some of the activities authorised in credentials (negotiation and adoption), but also empowers the holder to do more. Some of these acts can give rise to obligations for the state. For instance, if the treaty calls for a state to signal its consent to be bound by way of signature, then the signatory must carry full powers. Consent by way of signature, however, is rare[90] with many treaties preferring consent by ratification or accession.[91] Nevertheless, the final stages of negotiating such a treaty may well include a ceremonial signing of the adopted treaty text which serves to authenticate the version in question. Authenticating the text of the treaty may not amount to consent to be bound, but a signatory state must refrain thereafter from acts that would defeat the object and purpose of the treaty.[92] Again, this obligation can only arise where the signatory holds full powers allowing them to authenticate a text.

Full powers might, therefore, be viewed as a key document where treaties rely upon acts of delegates to signal consent to be bound by new obligations. Furthermore, the VCLT does allow an unlimited range of other methods to be agreed between states, generating the potential for consent to be bound to take a new form which relies upon the act of an individual at a COP.

The question that arises in the light of these established rules is whether the credentials being requested for COPs are the same limited form as those for diplomatic conferences, or whether they need to perform the wider functions of full powers. Logically, the answer will involve the COP's powers to develop obligations and depend upon whether new obligations are being introduced to which delegates are expected to provide consent to be bound.

In section 3.2.4, the variety of powers for developing the obligations of the contracting parties were listed. Each will be taken in turn, beginning with amending treaties and adopting protocols. Here it is possible to see that a delegate attending a COP, whose work includes adopting amendments to the original treaty or a protocol, requires credentials in the limited sense. Consent to be bound will usually be expected subsequently by way of ratification, acceptance, approval or accession.[93] Of course, if there is to be authentication of the protocol or amended text at the plenary, then full powers will be needed.

Moving on, powers to amend annexes or appendices can be found in wildlife treaties such as CITES and pollution conventions such as the Montreal Protocol on Substances that Deplete the Ozone Layer.[94] Adding species to appendices in order to extend protection over

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[88] VCLT, Article 11.
[89] VCLT, Article 2(1)(c).
[90] Ramsar is, actually, such an example; Ramsar Article 9(2).
[91] M.N. Shaw, *International Law* (6th ed., 2008) at 911.
[92] *Ibid.*
[93] Ulfstein, *supra* note 43, at 31; Brunnée, *supra* note 2, at 17-18.
[94] 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, in force 1 January 1989) 26 ILM 1550 (hereafter 'Montreal Protocol').

their populations, or altering emissions targets for particular substances, may deliver desirable flexibility in an uncertain or dynamic field of regulation. It may also appear less controversial and simply a matter of technical detail which does not add to the parties commitments under the convention.[95] However, this is not necessarily true in all cases and changes can significantly add to the extent of the parties obligations and be politically controversial.[96] With only a few exceptions, these amendments to MEAs eventually become binding for all contracting parties except those that declare, within a given time period, their non-acceptance.[97]

Locating states' tacit consent to be bound in such "opting-out" situations is said to fall within the bounds of 'any other agreed means' under the VCLT.[98] What seems less immediately apparent is whether such consent by silence or implication is to be attributed to the acts of the delegates attending a COP. This seems unlikely given the practice of delaying entry into force of amendments until a time after the end of a COP, during which period a larger group of individuals might be regarded as having remained silent.[99] It therefore appears that developing obligations in this manner does not usually require full powers for the delegates and that credentials in the limited sense would be sufficient.

The Montreal Protocol is an anomaly with regards to some amendments to its appendices since it does not allow for opting out of certain adjustments and reductions in the permitted levels of consumption and production of controlled substances. [100] Such amendments may be made by consensus and, failing that, by a two-thirds majority binding on all, including those that voted against.[101] Identifying consent to be bound in these circumstances is difficult. Where they may be made by majority vote, it seems consent to be bound may be absent, leading to doubts about the legal force of such adjustments. Alternatively, it has been argued a form of advance consent (by one of the regular means) was provided at the time of consenting to the protocol, which was possible because the parties were aware of the adjustments that would be needed at that time.[102] These alternatives, however, do not seem to suggest that full powers would be required by the delegates to these meetings.

The final form of power concerns interpretation of terms. In some instances these may be expressly authorised in the text of the treaty.[103] Churchill and Ulfstein believe the intention was therefore to create binding interpretations,[104] but locating consent to be bound is again problematic. A form of general consent, similar to that described for the Montreal Protocol, has been suggested.[105] However, it is difficult to see that the parties had the same level of awareness of the likely form these future decisions would take. And such de-limiting of general consent, so as to be available where parties do not know the detail of future decisions, would seem to remove the need for 'tacit consent' to explain binding amendments to appendices. Ultimately, if this is the basis for making these interpretations binding, then delegates still do not require full powers. The alternative is to question the independent

[95] Brunnée, *supra* note 2, at 18.
[96] *See* Section 3.2.4.
[97] *See* for example CITES, Article XV(1).
[98] Brunnée, *supra* note 2, at 19.
[99] *See* for example CITES, Article XV (1)(c); 1979 Convention on the Conservation of European Wildlife and Natural Habitats (adopted 19 September 1979, entered into force 1 June 1982) ETS 104, Article 17(3).
[100] Montreal Protocol, Article 2(9).
[101] *Ibid.* This type of amendment does not extend to the addition of new controlled substances, which remains subject to formal ratification under the 1985 Convention for the Protection of the Ozone Layer (adopted 22 March 1985, in force 22 September 1988) 26 ILM 1529, Article 9.
[102] Fitzmaurice, *supra* note 2, at 497; Brunnée, *supra* note 2, at 22; Camenzuli, *supra* note 2, at 16.
[103] *Supra* note 55.
[104] Ulfstein, *supra* note 43, at 32.
[105] Brunnée, *supra* note 2, at 24.

binding force of these interpretations,[106] and to either argue that they are agreed interpretations (see below) or soft-law with which states are prepared to comply. Again, this would also imply that delegates would need no more than traditional credentials for negotiations.

On other occasions, COPs have issued official interpretations without express authorisation from the treaty. Churchill and Ulfstein doubt that such decisions are binding, but instead suggest that they are at best authoritative.[107] Nevertheless, as Alan Boyle recognises, such decisions may constitute an agreed interpretation of the treaty which carries significance under Article 31(3)(a), VCLT.[108] As a result, these decisions might not add anything new to the original treaty obligations – they merely clarify what was originally intended.[109] Again the position is reached that the authority required need only be traditional credentials.

On balance, this analysis suggests that despite the range of powers available to develop or add to the obligations of contracting parties, the credentials committees of COPs need not demand 'full powers' for delegates. Thus, the individuals chosen to represent states need only produce evidence of authority to negotiate and adopt decisions since they are not called upon to express consent to be bound.

5.2. External Controls: MEA Provisions

Beyond the demands imposed for credentials, rarely is anything else stipulated about the identity of delegates. There is, however, a notable exception. A few international institutions require or request that states appoint delegates with particular qualifications. For example, in the context of IGOs, the World Meteorological Organization stipulates that delegations to its congress must designate a head who should be the director of its meteorological or hydrometeorological service.[110] Further, the constitution to the International Labour Organisation expects delegations to be made up of four members, two of whom are to represent the government whilst the remaining two are to represent respectively the employers and the workers.[111]

MEAs very rarely seek to direct the qualifications of delegates. The Ramsar Convention is virtually unique in providing that:

> The representatives of the Contracting Parties at such Conferences should include persons who are experts on wetlands or waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities.[112]

The World Heritage Convention includes a similar demand, albeit in the context of the World Heritage Committee which performs the same functions as a COP, but is not a plenary body.

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[106] *Ibid*, at 24-29; Fitzmaurice, *supra* note 2, at 497-500.
[107] Churchill and Ulfstein, *supra* note 1, at 641.
[108] A. Boyle, "Further Development of the Law of the Sea Convention: Mechanisms for Change", 54 *International and Comparative Law Quarterly* (2005) pp. 563-584, 572.
[109] Brunnée, *supra* note 2, at 31.
[110] Convention of the World Meteorological Organization (adopted 11 October 1947, entered into force 23 March 1950), Article 7(b) available <http://www.wmo.int/pages/governance/policy/index_en.html>.
[111] Constitution of the International Labour Organization (1919, as amended), Article 3(1) available <http://www.ilo.org/ilolex/english/constq.htm>. An interesting variant on the credentials procedure is provided by this since the representative of the workers and employers are supposed to have been legitimately nominated by these groups; Schermers and Blokker, *supra* note 34, at 197.
[112] Ramsar, Article 7(1).

Thus the representatives of those states elected to a seat on the executive committee are to be 'persons qualified in the field of the cultural or natural heritage.'[113]

These two articles, which seek to dictate the characteristics of delegates, are not found in other MEAs. They raise interesting points. The first is that the external control sought is rather weak given the drafting deployed. In the case of Ramsar, the article merely establishes that parties 'should' send someone with suitable qualifications. Further, the expertise is not limited to a scientific qualification, but can be derived from administrative experience or any other appropriate capabilities chosen by the contracting party. What is more the degree of knowledge and experience is left open-ended. This indeterminacy in the expertise actually required is echoed in the World Heritage Convention provision given that the forms of qualification for representatives are also left undefined.

It would be interesting to discover whether the credentials committee for Ramsar and the Secretariat to the World Heritage Convention pay much heed to these provisions. Certainly the publically available reports of the credentials committee to Ramsar do not contain sufficient detail to be able to answer this. Furthermore, the Rules of Procedure for the World Heritage Committee might require that state members forward names and qualifications of their representatives to the Secretariat, but they are silent as to what is and can be done with those details.[114] From an alternative perspective, the question could be asked whether the contracting parties consciously look to meet this requirement when putting together a delegation. This too is difficult to answer. A sense cannot be gained from the lists of those who attend the COP to Ramsar and the World Heritage Committee, since they do not reliably or clearly indicate expertise.

The thinking behind these provisions is also unclear. Schermers has noted a number of perceived advantages of scientific experts as delegates over those from governments in the context of non-plenary organs.[115] Of note is the presumed advantage that the interests of the IGO will be more of a focus for participants than those tied to a political agenda, although there may be less access to government branches for such individuals creating implementation problems in the long-term.[116] In reality, MEAs sometimes require expert input and at other times political. It may be that in the case of Ramsar and the World Heritage Convention the need for regular technical scientific input at plenary meetings was known from the start,[117] whilst other conventions needed predominantly political judgments to be made on the scientific evidence that was being produced.[118] Equally plausible, but rather more troubling, would be if, given the other MEAs were predominantly negotiated under the auspices of UNEP, a common precedent was used as a foundation for negotiations, which led to the tendency to omit such a clause.[119]

5.3. Leads from Practice

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[113] Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975), 11 ILM 1358, Article 9(3). The Rules of Procedure for the committee add that parties are strongly recommended to include people with expertise in both fields; Rule of Procedure (1977, as amended), Rule 5.2 available <http://whc.unesco.org/en/committeerules/>.

[114] Rules of Procedure, *supra* note 113, at 5.3.

[115] H.G. Schermers, "The International Organizations", in M. Bedjaoui (ed.), *International Law: Achievements and Prospects* (1991) pp. 67-100, at 89.

[116] *Ibid.*

[117] Particularly for Ramsar which did not have a dedicated scientific committee until 1993, when the Scientific and Technical Review Panel was established at COP5; Resolution 5.5.

[118] *See* for example, the political decision needed to determine 'dangerous' interference with the climate system identified in M. Meinshausen, "What does a 2^{o}C target mean for greenhouse concentrations?", in H.J. Schellnhuber and others (eds.), *Avoiding Dangerous Climate Change* (2006) pp. 265-280, at 265.

[119] For the use of such precedents *see* Churchill and Ulfstein, *supra* note 1, at 630.

As has been observed, there are limited external controls upon the identity of delegates, and the internal modalities of states can operate relatively unfettered. As to evidence of the modalities states have adopted, few printed resources are available. The most obvious are the lists of participants to each COP, but these can only generate possible lines of enquiry since they do not give a sufficiently reliable or detailed account of an individual and their skills. Furthermore, such lists are not always kept or made readily available to the public.[120] Where there are consecutive or complete runs for all COPs, leads on the internal modalities present themselves.

The Ramsar Convention provides a good example of this potential. There have been ten COPs since Ramsar entered into force.[121] The lists of participants have been analysed and data produced on two bases. The first considers the size of the delegations that states prefer to send to meetings. The second traces individual delegates through COPs so as to gain an impression of the level of experience that is present in delegations.

5.3.1. Delegation Sizes

When considering delegation sizes it is first necessary to separate out those countries that host the COP. This is because hosting generates huge anomalies in the size of delegations, as revealed in Table 1.[122] There is then a second group of states for whom care must be exercised when including their numbers. These are states that, at the time of the COP, hold the Presidency of the Council to the European Union. Despite the European Union being a non-party to the Ramsar Convention, since the inclusion of a common foreign and security policy chapter in the Treaty on European Union, member states have promised to coordinate their actions in international organisations and conferences so as to uphold the Union's position.[123] Whilst a common position is not demanded in such situations, softer coordination still requires additional capacity in terms of delegates so that if a common position does exist, a joint front can be presented.[124]

[120] For example, the Convention on Biological Diversity only provides such lists online for COPs 1,2,8,9, and 10.

[121] COP1, Cagliari, Italy (1980); COP2, Groningen, Netherlands (1983); COP3, Regina, Canada (1987); COP4, Montreux, Switzerland (1990); COP5, Kushiro, Japan (1993); COP6, Brisbane, Australia (1996); COP7, San José, Costa Rica (1999); COP8, Valencia, Spain (2002); COP9, Kampala, Uganda (2005); COP10, Changwon, Rep. of Korea (2008).

[122] Even though the spikes in delegation size are anomalous, there may be some residual interest in studying the impact of hosting upon the internal modalities. For example, are such large delegations stratified so as to include a core negotiation team whose focus upon the agenda need not be compromised by hosting duties, or does hosting offer the luxury of 'rolling' attendance where experts can drop-in for particular negotiations?

[123] Treaty on European Union, Article 34, OJ 2010/C 83/01.

[124] For example, the UK (as President at the time) had to send extra people to COP9; *supra* note 59.

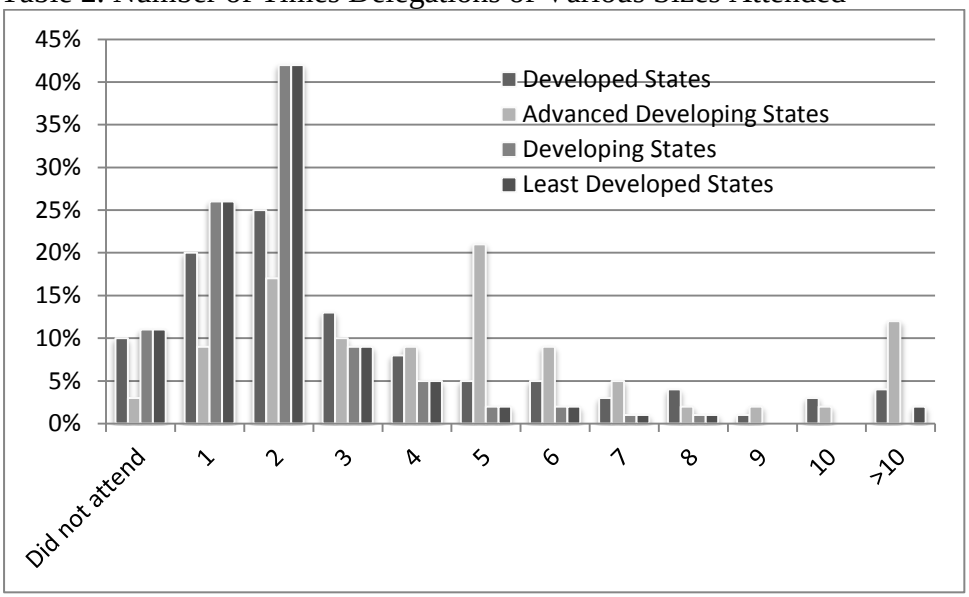
Table 1. COP Host States and Delegation Size over Time[125]

	COP 1	**COP 2**	**COP 3**	**COP 4**	**COP 5**	**COP 6**	**COP 7**	**COP 8**	**COP 9**	**COP 10**
Australia	0	4	2	4	3	**20**	7	7	7	8
Canada		2	**29**	4	3	5	7	12	6	4
Costa Rica					2	4	**13**	4	1	2
Italy	**19**	1	1	4	1	2	5	4	6	3
Japan	2	2	2	6	**52**	7	10	8	10	8
Netherlands	6	**14**	3	6	5	6	10	6	7	6
Rep. of Korea							10	10	21	**35**
Spain		2	2	2	2	1	8	**43**	7	5
Switzerland	1	2	1	**8**	1	3	2	5	3	2
Uganda				3	2	4	4	7	**11**	13

What the remaining figures reveal is that the average size for delegations has increased from two to three over the 10 Ramsar COPs. In addition, some states, which have been contracting parties for a significant period of time, have failed to attend any COPs, these being Bahrain and Luxembourg. Nevertheless, attendance remains very good; averaging 90% of contracting parties. More interestingly, although perhaps not as surprising given their greater available resources, developed and advanced developing state parties have most often sent a delegation which exceeds the average size for a given COP; 34% and 60% of the time respectively. In contrast, developing and least developed state parties have only exceeded the average on 13% and 9% of the occasions a delegation was sent. More generally, and as illustrated in Table 2, the latter two sets of states are most likely to send between two and three delegates, but are no more likely to fail to attend than developed states. This may be because of the availability of external funding for the least developed and developing states which can cover the cost of these delegates.

[125] Highlighted cells indicate the year in which that state was the host. Empty cells indicate that the state was not, at the time, a contracting party with full participatory rights. A value of zero indicates the state was a contracting party and so could have sent a delegation. All figures taken from the lists of participants available through <http://www.ramsar.org/cda/en/ramsar-documents-cops/main/ramsar/1-31-58_4000_0__>.

Table 2. Number of Times Delegations of Various Sizes Attended[126]



Further observations based on the attendance records for delegation sizes indicate two phenomena. The first is that some states habitually send what will be described as super delegations. These are delegations comprising 10 or more delegates. France, Japan, the Republic of Korea, the United States of America, China, and Malaysia have regularly adopted this modality whilst isolated instances for recent COPs can be observed for South Africa, Thailand, Uganda and Tanzania. Second, a number of states consistently send larger than average delegations. For example, the Netherlands, the United Kingdom, Denmark from 1980-2002, Brazil, South Africa, Thailand, Kenya, Uganda and Tanzania.

These records and the statistics that can be generated from them demonstrate some of the information that can be gleaned from the Ramsar list of participants, and the patterns that can be revealed. If the lists available under other MEAs are investigated, average delegation sizes can be tentatively compared. Early research into the Convention on Climate Change ('UNFCCC'),[127] CBD and CITES indicate that far more resources and senior politicians are committed to these COPs. For example, the average delegation size at the most recent COPs are 31 (UNFCCC), 10 (CBD) and 5.5 (CITES), whilst the involvement of ministers is – as might be anticipated – close to 60% of delegations for the UNFCCC. However in these instances, such data is intriguing as to the possible thinking behind, and consequences of, these modalities. These can only be explored fully through interviewing those responsible for setting them.

5.3.2. Delegate Experience

The Ramsar lists of participants also reveal information about the level of experience present in delegations. Thus, where a state party had the possibility of sending someone who had previously attended a COP, a note can be made of those occasions when they did and when they didn't. The first item to note from this is that experience is often present. Of those contracting parties in a position to include a delegate with experience at COPs 2-10, on average 62% did so. Thereafter the states fall into a number of groups. The first is those states that regularly send a super delegation and which include a number of delegates with previous

[126] Figures calculated on the basis that once a state is a party to Ramsar they could have sent a delegation. Failure to do is recorded as a 'Did not attend'.
[127] *Supra* note 47.

experience. The best examples of this practice are China and the USA. At COP10, China sent 17 delegates, of whom seven had attended a Ramsar COP in the past. Likewise, at COP9 the USA sent 10 delegates, five of whom had previous experience of a Ramsar COP.

Thereafter states fall into groups combining (i) experience with larger than average delegations,[128] (ii) those that might send an average or below average sized delegation, but they have almost always included one individual who has previous experience,[129] (iii) those that have never sent an experienced delegate but do send large delegations,[130] and (iv) those that regularly send average sized (or smaller) inexperienced delegations.[131]

The records also reveal that some individuals have provided long service for their states. For example, Uganda has attended every COP since becoming a contracting party in 1990, and Paul Mafabi has always been one of its delegates. Other long-serving delegates include Veit Koester (1980-2002) and Paul Jepsen (1987-2002) for Denmark, Makoto Komoda (since 1990) for Japan, and Dr Zygmunt Krzeminski (1980-1999) and Dr Kazimierz Dobrowolski (1980-83 and 1990-99) for Poland. The effect of such individuals upon negotiations and developments under COPs remains unclear.[132]

The modalities described above concern intra-COP patterns, but an added dimension, which ought to be considered in the future, is that of inter-COP experience. The atomised nature of MEA administration threatens the ability of regimes to complement each other. Delegate experience from other plenary bodies may therefore be an additional factor in the internal modalities of delegations.

5.4. Further Research Questions

As noted, the records that are available on delegation composition are predominantly intriguing rather than conclusive. With respect to the size of delegations and the capabilities of delegates, the data merely notes fluctuations without establishing the reasoning behind these modalities and their consequences. In this respect, accounts of UNGA could provide good theories of the likely tactics being employed and consequences. For example, if delegation size is taken as a starting point, Robert Keohane observes that many states (particularly small states) cannot afford to send large enough delegations to keep up with all of the work of UNGA.[133] This, he suggested, gave larger and better informed states and regional groupings more influence over the smaller delegations.[134] More recently, Schermers and Blokker state that whilst many international organisations are principally interested in a member being present, there are advantages and disadvantages to having a small delegation.[135] Small delegations are more flexible and can easily maintain coherence in the positions adopted, whilst large delegations are likely to contain greater experience and be able to engage in more negotiations or meetings, particularly where there are sub-groups meeting simultaneously.[136] Despite running for a short period, COPs to environmental

[128] e.g. the UK sent larger than average delegations to the last seven COPs, all bar one of which had an experienced delegate.
[129] e.g. Namibia, Botswana and Senegal.
[130] The best example is Indonesia which has sent delegations of six to eight individuals to the last three COPs, none of whom had attended a Ramsar COP before.
[131] e.g. New Zealand and Sri Lanka.
[132] There is some familiarity with the impact of charismatic leaders upon global environmental governance, such as Rachel Carson and Al Gore; K. O'Neill, *The Environment and International Relations* (2009), at 68.
[133] R.O. Keohane, *Political Influence in the General Assembly (International Conciliation No. 557)*, (1966) at 27.
[134] *Ibid.*
[135] Schermers and Blokker, *supra* note 34, at 187.
[136] *Ibid.*

treaties have much work to complete in a tight timeframe, and parallel working is therefore also common.

In terms of case studies, the author's initial investigations suggest that the UK's approach in the past appeared to be to send sufficient delegates to be able to take part in contact groups for resolutions that required greater implementation by the UK.[137] This was because the UK recognised the need to implement these resolutions with fidelity and therefore it was necessary to ensure that that which was agreed was practicable.[138] Faith is also placed in the briefing document prepared by DEFRA to ensure that the delegation would act consistently, and not least because, by the time the COP opened, any reworking of draft resolutions would likely be minor.[139]

With respect to the capability of delegates, Conor Cruise O'Brien, reflecting upon his personal experiences of UNGA, sought to remind others that:

> The United Nations is made up of people... and their differences do affect the proceedings and the decisions. It can be argued that delegates, being there to represent their country, not themselves, ought not to have personal outlooks, or at least ought not to allow them to intrude; but this is in practice impossible.[140]

Similarly John Hadwin and Johan Kaufmann felt that the political importance and experience of delegates was significant since UNGA debates and decisions were affected by the personality of delegates.[141] Furthermore, lack of experience would inhibit interventions.[142] This experience can relate to the plenary itself, or amount to subject expertise. With respect to the former, it is difficult to know how many meetings it takes until an individual derives benefit from experience when negotiating.[143] But thereafter, a number of other questions arise. Are there any individuals, for instance those who have served for long periods as delegates, who have been able to influence negotiations to a greater extent? Do some find themselves being more frequently invited to lead work on sub-committees and, if so, why? What impact does the retirement of long serving delegates have upon the implementation of the MEA in their states and upon future internal modalities? For example, ever since Krzeminski and Dobrowolski stopped acting as delegates in 1999, Poland has failed to send any delegates with prior experience of Ramsar COPs. Finally, whilst Hadwin and Kaufmann recall the saying that in selecting delegates it was better to have 'continuous clods than occasional geniuses', they also warned against the long-serving delegate who has had time to build an empire without much regard for co-ordination with the government position.[144]

Subject experience may also prove important for shaping negotiations. Some states will ensure that suitable specialists are available if resolutions so demand. For example, at COP10 of Ramsar, Resolution X.25 was adopted on Wetlands and Biofuels. This was a resolution of importance to the UK, and a specialist in the field (with additional experience of similar discussion conducted under the CBD) was chosen as a delegate for the UK in order to cover the contact group working on this resolution.[145] Nevertheless, not all states have this option and the concern is that individuals cannot be expected to be experts in all of the subjects

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[137] *Supra* note 59.
[138] *Ibid.*
[139] *Ibid.*
[140] C.C. O'Brien, *To Katanga and Back* (1962) at 28.
[141] J.G. Hadwin and .J Kaufmann, *How United Nations Decisions are Made* (1960) at 29.
[142] *Ibid*, at 28.
[143] David Stroud felt he understood the COP process by his third meeting; *supra* note 59.
[144] Hadwin and Kaufmann, *supra* note 141, at 27 and 31.
[145] *Supra* note 59.

being discussed.[146] It is suspected that this is a particular difficulty for smaller delegations without large panels of experts in their country of origin who can be despatched to COPs or contacted. This may be especially so in COPs to MEAs with extremely wide mandates. For example, the CBD is intended to deal with diversity between species, ecosystems and genes, whilst Ramsar itself covers inland and marine wetlands. The question that follows from this is whether such inexperienced delegations find themselves sidelined from debates or quick to accept the word of other delegations or the advice issued by Scientific Committees to a COP.[147]

6. The Internal Modalities for Participation

The mechanics of participating in COPs are largely defined by the treaty and, in particular, its rules of procedures. The rules on voting procedures will have a particular influence upon the way states negotiate. In contrast to UNGA, where decisions are made on a simple or two-thirds majority vote,[148] MEAs predominantly favour decisions made on the basis of consensus, although voting arrangements are often put in place as a fall back. Consensus decision making is considered as the absence of any objection from a state to the decision proposed.[149] For example, Ramsar provides for resolutions, recommendations and decisions to be adopted by a simple majority of those present and voting, although the Rules of Procedure say that this must be a last resort after every effort has been made to reach consensus.[150] Voting is very rare under Ramsar, but not so for CITES where additions to and amendments of the appendices are regularly made following a vote.[151]

Where forms of majority voting are employed – and the best documented is UNGA – delegations might need to identify those states that will support the desired outcome, those that will not, and those who are undecided but may be open to persuasion to either vote in favour or at least abstain.[152] Influential states may also be contacted in order to see whether their support can encourage others to vote accordingly, whilst the vote of small nations might be given a lower priority.[153]

In theory, consensus decision-making should preserve the right of parties to object whilst also ensuring that a positive vote is not necessary.[154] In practice this raises a number of interesting questions. First, does this lead to ambitious states holding out for significant concessions in order to buy their support or at least silence?[155] Second, to what extent does consensus decision making ensure that more states participate in decision making? With non-plenary contact groups and discussions in meeting rooms being of significance for

[146] Hadwin and Kaufmann, *supra* note 141, at 26.
[147] Ramsar provides formal briefing sessions on technical resolutions to help states understand proposals; *supra* note 59.
[148] Rules of Procedure of the General Assembly (as amended September 2007), Rule 82-86 available <http://www.un.org/ga/search/view_doc.asp?symbol=A/520/rev.17&Lang=E>.
[149] Gehring, *supra* note 2, at 470. The simplicity of this was challenged at the Cancun round of climate change talks where Bolivia's objections were not allowed to prevent the adoption of the Cancun Agreements by the COP; *Earth Negotiations Bulletin* v.12 (498), at 28 available <http://www.iisd.ca/download/pdf/enb12498e.pdf>.
[150] Ramsar, Article 7(2) *cf* Ramsar Rules of Procedure , *supra* note 71, Rule 40.
[151] *See* for example the Summary Records for Committee I, 18–23 March 2010 available <http://www.cites.org/eng/cop/15/sum/index.shtml>.
[152] *See* O'Brien, *supra* note 140, Chapter 1; Hadwin and Kaufmann, *supra* note 141, Chapter II.
[153] Keohane, *supra* note 133, at 37.
[154] Gehring, *supra* note 2, at 470.
[155] This was a concern raised by Oran Young; O. Young, "Political leadership and regime formation in the development of institutions in international society", 45 *International Organization* (1991) pp. 281-308, at 284.

negotiations, how do delegations operate to ensure they have access to the discussions of a contact group?[156] Is language a barrier to such participation for some states? In theory an uninvolved state may raise an objection in plenary following the outcomes of those contact group negotiations, resulting in the decision either being defeated or delayed until that state has been consulted. However, do states consider this a last resort due to embarrassment? Alternatively, such objections may be limited by the rules of procedure, as is the case under CITES which restricts the reopening of a recommendation in plenary if it has been debated in the sub-committees with the availability of full translation.[157] Thus consensus decision making may still require a modality of proactive engagement with negotiations by states before any formal adoption. This in turn requires sufficient numbers of delegates as well as experience in how to engage with contact groups.

Beyond this, the external controls on modalities become softer. They may simply try to steer groups towards particular forms of negotiation. For example, in 1994 at the Fort Lauderdale COP, CITES introduced new guidelines for inscribing species in its appendices.[158] These were notable for attempting to ensure that listing decisions were based upon objective or scientific criteria.[159] Thus, the guidelines seek to make particular forms of argumentation the legitimate basis for negotiations, rather than unrestrained bargaining.[160]

Otherwise, states are free to develop their own modalities for participation in COPs. Once again, the few available accounts on participation (mainly in UNGA) may provide insights into the likely modalities that would be encountered for COPs. For instance, most UNGA delegates act on instructions from their home government, although there remain exceptions.[161] As Schermers observes, the more junior the delegate, the more detailed the instructions are likely to be.[162] Hadwin and Kaufmann felt that ideally instructions would be the result of careful consideration by relevant departments before the meeting, duly approved at the highest political level, and specific as to objectives and the activity required but with some freedom if matters took an unexpected turn.[163] Certainly the UK's preparations described earlier come close to good practice by this measure. Of course, strategic pauses can be taken in proceedings if the chair of a session feels it is beneficial to give delegates a chance to communicate with their home departments.[164]

A final area of interest concerns the general strategy adopted by the delegation for looking to influence proceedings. Here there exist theories concerning different forms of leadership,[165] and more recognition that, in epistemic communities, the claim to knowledge is

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[156] *See* in the context of inexperienced NGOs being unfamiliar with ways to influence the COP process, E. Corell, "Non-state actor influence in the negotiations of the Convention to Combat Desertification", 4(3) *International Negotiation* (1999) pp. 197-223 , at 209-210 and 213.

[157] *Supra* note 82, Rule 19.

[158] CITES Resolution Conf. 9.24 (Rev. CoP 15). *See* generally, Bowman, Davies and Redgwell, *supra* note 30, at 492-499.

[159] S.M. Dansky, "The CITES "objective" listing criteria: Are they objective enough to protect the African Elephant?", 73 *Tulane Law Review* (1999) pp. 961-980 , at 964-965.

[160] *See* T. Gehring and E. Ruffing, "When arguments prevail over power: The CITES procedure for the listing of endangered species", 8(2) *Global Environmental Politics* (2008) pp. 123-148.

[161] Bodansky, *supra* note 9, at 116.

[162] Schermers, *supra* note 115, at 85.

[163] Hadwin and Kaufmann, *supra* note 141, at 34.

[164] At COP7 in Costa Rica, delegates to the Ramsar meeting found themselves in the unusual position of a state (Serbia) using the proceedings to try and gain international recognition. Given the political sensitivity of the situation, lines of communication to the UK Foreign and Commonwealth Office were made available for use by the delegation; *supra* note 59.

[165] *See* Keohane, *supra* note 133, at 37-38; J. Gupta and L. Ringius, "The EU's climate leadership: Reconciling ambition and reality", 1(2) *International Environmental Agreements: Politics, Law and Economics* (2001) pp. 281-299, at 282.

a source of influence.[166] What is more, those communities, if they are involved in a number of MEAs, may be able to take co-ordinated action in multiple plenary bodies in order to drive through a particular policy. This was recently exemplified in relation to the bird flu outbreak, which had generated misguided proposals from the public and politicians that threatened wildfowl and their habitats.[167]

7. Conclusions

The unobtrusive measures that have been deployed in this paper to investigate the internal modalities of delegate preparation for, and participation in, COPs have advanced understandings on the middle- and background to decisions. External rules generated by treaties and rules of procedure are relatively easy to identify. They concern the timing of document circulation, consultation with a variety of stakeholders, the credentials of delegates, delegate capabilities and the running of proceedings. Nevertheless, they leave a weak impression upon the autonomy of states to define their own modalities. These customs, rules and ethics are harder to uncover using library based research. Statistical analysis of delegations generates intriguing patterns and leads, but with reports of proceedings containing so little detail on who said what and when, library sourced records have limited usefulness. Finally, there are few accounts on preparation and participation, and those that exist predominantly relate to IGOs and are over 50 years old. Nevertheless, it was argued that they could still be useful in the context of COPs, and they did prove illuminating. Such sources gave support to, and generated suspicions, concerning the way delegations operate.

Ultimately, however, the analysis has left far more questions unanswered than resolved. Key areas identified include: establishing the ways different states prepare their positions on draft resolutions (who leads preparation, is chosen for consultation, and why), the extent credentials committees and states enforce capability requirements for delegates, the rationale behind the differing delegation sizes and levels of expertise plus any observed consequences during COPs, the impact of individuals upon proceedings and national implementation, the extent to which the advice of sub-committees is questioned, and the practical working of consensus decision making.

The paper has therefore illuminated the field but also revealed the limits of library research. Nevertheless, significant foundations have been provided for further research employing alternative methodologies, such as interviewing delegates. Here, one test interview revealed far more about the modalities of UK preparation and participation in the context of Ramsar than was apparent from the internet sources. Not only did the interview suggest the UK's modalities are considered and sophisticated, but it gave encouragement for further interviews. What is more, many of the insights were gained independently from the questions the interviewer had in mind. This lends weight towards favouring unstructured 'elite' interviews,[168] rather than fully structured (possibly questionnaire based)[169] qualitative research. The difficulty, however, lies in selecting and securing further interviews. In this regard the paper has highlighted the diversity between MEAs, suggesting that, as long as

[166] Corell, *supra* note 156, at 199.
[167] *See* R. Cromie and others, "Responding to emerging challenges: Multilateral environmental agreements and highly pathogenic Avian Influenza H5N1", 14(3-4) *Journal of International Wildlife Law & Policy* (2011) pp. 206-242.
[168] For a good guide to elite interviewing techniques *see* L.A. Dexter, *Elite and Specialized Interviewing* (2006).
[169] On the use of questionnaires with delegates to international organisations *see* H.K. Jacobson, "Deriving Data from Delegates to International Assemblies", 21(3) *International Organization* (1967) pp. 592-613.

conclusions are predominantly confined to the regime under consideration, conventions can and should be studied in isolation.

From the outset it has been argued that researching delegate preparation and participation will, amongst other things, inform judgments on the legitimacy of the decisions reached and consequently the likelihood that they will prove persuasive . Furthermore, conducting more research in this field will give a more realistic appreciation of the contribution of COPs to international environmental law, and open up new spaces for challenge or recognition as best practice.